

[Proposed] Order to Plaintiffs'  
Motion to Exclude Portions of  
Rebuttal Expert Report of  
Konstantinos Psounis

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**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, WILLIAM BYATT,  
 JEREMY DAVIS, CHRISTOPHER  
 CASTILLO, and MONIQUE TRUJILLO  
 individually and on behalf of all others  
 similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

**[PROPOSED] ORDER GRANTING  
 MOTION TO EXCLUDE PORTIONS OF  
 THE REBUTTAL EXPERT REPORT OF  
 KONSTANTINOS PSOUNIS**

Judge: Hon. Yvonne Gonzalez Rogers  
 Date: September 27, 2022  
 Time: 2:00 p.m.  
 Location: Courtroom 1 – 4th Floor

Before the Court is Plaintiffs' Chasom Brown, William Byatt, Jeremy Davis, Christopher Castillo, and Monique Trujillo, on behalf of themselves and all others similarly situated ("Plaintiffs") Motion to Exclude Portions of the Rebuttal Expert Report of Konstantinos Psounis. On June 7, 2022, Defendant Google LLC ("Google") served the expert report of Dr. Psounis. In this report, Dr. Psounis provided 13 opinions purporting to rebut the opinions rendered by two experts proffered by Plaintiffs: Mr. Hochman and Mr. Schneier. On August 23, 2022, Plaintiffs filed the present motion to exclude Psounis opinions 1, 3, and 7-10, all of which attempt to rebut opinions proffered by Mr. Hochman.

Upon full consideration of this matter, the Court holds that opinions 1, 3, and 7-10 of Dr. Psounis's report should be excluded. Google has failed to sustain its burden to show these opinions are the product of "reliable principles and methods" that have been "reliably applied." Fed. R. Evid. 702; *see also Shelton v. Air & Liquid Sys. Corp.*, 2022 WL 2712381, at \*1 (N.D. Cal. July 11, 2022) (Gonzalez, Rogers, J.) ("The proponent of expert testimony has the burden of proving admissibility in accordance with Rule 702."). In preparing his opening expert report, Mr. Hochman ran tests on over [REDACTED] entries from [REDACTED] of the [REDACTED] data sources Google itself identified as relevant. Hochman Report App. G ¶ 25. In contrast, Dr. Psounis ran no tests at all, and only reviewed data from [REDACTED] of the [REDACTED] relevant data sources, and then improperly extrapolated based on that narrow analysis. This is insufficient. *See In re Roundup Prod. Liab. Litig.*, 390 F. Supp. 3d 1102, 1112 (N.D. Cal. 2018) ("[U]njustified extrapolations from existing data can require the Court to exclude an expert."); *see also Young v. Cree Inc.*, 2021 WL 292549, at \*5 (N.D. Cal. Jan. 28, 2021) (Gonzalez Rogers, J.) (excluding as unreliable testimony from expert that merely "grouped together similar Cree LED bulbs, tested a fraction of them, and then extrapolated his conclusions across a wide array of Cree products.").

Moreover, the limited analysis included within Dr. Psounis's report was conducted by Google's counsel, not Dr. Psounis, independently rendering his opinions unreliable and subject

to exclusion. *See Baker v. FirstCom Music*, 2018 WL 2572725, at \*5-6 (C.D. Cal. Mar. 27, 2018) (Under *Daubert*, “experts are expected to verify the reliability of the data underlying their conclusions independently instead of simply adopting the representations of an interested party”).

Finally, as Dr. Psounis did not even attempt to disprove the Hochman data analysis he purports to rebut, his opinions fall outside the scope of proper rebuttal testimony and are, therefore, untimely. *See* Dkt. 465; *People v. Kinder Morgan Energy Partners, L.P.*, 159 F. Supp. 3d 1182, 1192-93 (S.D. Cal. 2016) (excluding as untimely expert testimony that failed to constitute proper rebuttal report).

It is therefore

**ORDERED, ADJUDGED, and DECREED:**

1. Court **GRANTS** Plaintiffs’ Motion to Exclude Portions of the Rebuttal Expert Report of Konstantinos Psounis.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Yvonne Gonzalez Rogers  
United States District Judge